V12 July 1, 1947 - June 30 1948

of 815 feet above average terrain, subject to approval of antenna structure, location, and height by Civil Aeronautics Authority.

Each of the Commissioners, other than Commissioner Walker, voted to grant the application of North Jersey Broadcasting Co., Inc. Each of the Commissioners, other than Commissioner Hyde, voted to grant the application of North Jersey Radio, Inc. Each of the Commissioners, other than Commissioner Durr, voted to grant the application of the American Broadcasting Co., Inc. Each of the Commissioners other than Commissioner Jones, voted to grant the application of Unity Broadcasting Corp. of New York. Commissioners Coy, Walker, Durr, Hyde, and Webster voted to grant the application of WMCA, Inc.

In addition Commissioners Walker, Durr, and Jones favored a grant of the application of the Board of Missions and Church Extension of the Methodist Church, and Cocommissioners Hyde, Jones, and Sterling favored granting the application of News Syndicate Co., Inc.

Commissioners Hyde and Walker are of the opinion that only one of the five channels available in this proceeding should be assigned to New Jersey. Commissioner Walker believes that this channel should be assigned to North Jersey Radio, Inc. of Newark. Commissioner Hyde believes that it should be assigned to North Jersey Broadcasting Co., Inc. of Paterson.

Commissioner Durr dissents from the conclusions as to the insufficiency of the evidence offered by the American Jewish Congress.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In re Applications of	
WBNX BROADCASTING CO., INC., New York, N. Y.	DOCKET No. 6013
NEWS SYNDICATE CO., INC., NEW YORK, N. Y.	DOCKET No. 6175
WMCA, INCORPORATED, NEW YORK, N. Y.	DOCKET No. 6177
DEBS MEMORIAL RADIO FUND, INC., NEW YORK, N. Y.	DOCKET No. 6178
FREQUENCY BROADCASTING CORP., BROOKLYN, N. Y.	DOCKET No. 6182
AMERICAN BROADCASTING CO., INC., NEW YORK, N. Y.	DOCKET No. 7217
BERNARD FEIN, NEW YORK, N. Y.	DOCKET No. 7219
WLIB, INCORPORATED, NEW YORK, N. Y.	DOCKET No. 7220
PEOPLES RADIO FOUNDATION, INC., New York, N. Y.	DOCKET No. 7221
METROPOLITAN BROADCASTING SERVICE, NEW YORK, N. Y.	DOCKET No. 7224
N. M. U. BROADCASTING CO., INC., NEW YORK, N. Y.	DOCKET No. 7225
AMALGAMATED BROADCASTING SYSTEM, INC., NEW YORK, N. Y.	DOCKET No. 7226
UNITY BROADCASTING CORP. OF NEW YORK, NEW YORK, N. Y.	DOCKET No. 7228
NORTH JERSEY RADIO, INC., NEWARK, N. J.	DOCKET No. 7230
RADIO PROJECTS, INC., NEWARK, N. J.	DOCKET No. 7232
NORTH JERSEY BROADCASTING CO., INC., PATERSON, N. J.	DOCKET No. 7234
RADIO CORPORATION OF THE BOARD OF MISSIONS AND CHURCH EXTENSION OF THE METHODIST CHURCH, NEW YORK, N. Y. For Construction Permits.	DOCKET No. 7665

April 7, 1948

MEMORANDUM OPINION

BY THE COMMISSION (COMMISSIONER JONES DISSENTING):

1. The Commission has before it for its consideration a motion filed November 14, 1946, by the News Syndicate, Inc., to strike from the record herein all evidence relating to the content and policies of its newspapers, the New York Daily News and the New York Sunday News, adduced in these proceedings by the American Jewish Congress. The American Jewish Congress (hereinafter referred to as "AJC"), on November 21, 1946, submitted an opposition to the motion. On April 9, 1947, the Commission issued its proposed decision in the above-entitled matter and simultaneously adopted a memorandum opinion, released

June 13, 1947, proposing to grant the motion of the News Syndicate to strike the AJC evidence from the record.[1] Pursuant to an order of the Commission of June 14, 1947, the AJC was permitted to submit exceptions to the Commission's proposed decision and memorandum opinion, to file briefs in support of such exceptions, and to appear at the oral argument held before the Commission on June 27, 1947. The News Syndicate filed a brief with the Commission in reply to the exceptions and brief filed by the AJC, and, at the oral argument, addressed itself to these exceptions. On October 21, 1947, the Commission adopted a final decision, released November 4, 1947, which stated among other things, that on consideration of the exceptions filed by the AJC and the oral argument thereon, that it could find no basis for modifying the views expressed in its memorandum opinion of April 9, 1947. This decision of October 21, 1947, was, however, set aside and vacated by Commission order of December 16, 1947, and further oral argument was held before the Commission on January 12, 1948, in which both the News Syndicate and AJC appeared and directed further arguments to the exceptions of the AJC to the Commission's memorandum opinion proposing to strike the AJC testimony. We, thus have before us for our consideration once again, the New motion to strike the AJC testimony.

2. The AJC appeared at the hearing in this proceeding, and under section 1.723 (formerly sec. 1.195) of the Commisson's rules and regulations, offered testimony by which it sought to show that the News has evidenced bias against minority groups, particularly Jews and Negroes, and has published irresponsible and defamatory news items and editorials concerning such minorities. It alleged that the News had thus demonstrated, by the manner of its past operation of its newspapers, that it is unqualified to be the licensee of a radio station because it could not be relied upon to operate its station with fairness to all groups and points of view in the community, and that a grant of its application in the present case would thus not be in the public interest. The affirmative testimony offered by AJC to prove its contention was of two types; a selection of some 23 news stories and editorials printed in the pages of the newspapers published by the News Syndicate over an 8-year period were introduced as direct evidence of bias and irresponsibility, and a "content analysis" was introduced which purported to show how the News carried a larger percentage of unfavorable references to Jews and Negroes in its news columns than any of several other New York papers. The AJC was also permitted a limited right of cross-examination of News' witnesses on the issues which it raised. The News, similarly, offered affirmative testimony and conducted cross-examination of AJC witnesses on the issues raised by that organization.

3. In moving that this tesimony be stricken from the record, the News originally urged three grounds: That to receive or consider such testimony would be in violation of the First Amendment; that to receive or consider such tesimony would be in violation of section 326 and other provisions of the Communications Act; and that the manner in which the testimony was presented and received so deprived the News of notice and subjected it to expenditure of time and money as to deprive it of liberty,

[1] Commissioners Walker and Webster did not participate in the memorandum opinion of June 13, 1947; Commissioner Jett concurred in the result and Commissioner Durr dissented.

and proprty in violation of the First Amendment of the Constitution. As a subsidiary aspect of this third ground, the News alleged that it was deprived of rights under the Due Process Clause of the Fifth Amendment because it was put to the burden of expense of showing that the testimony offered by AJC is completely inaccurate and untrustworthy. In subsequent arguments and pleadings, the News also urged that the testimony offered by the AJC is so unreliable and inconclusive that it should be stricken from the record as lacking sufficient probative force for admission as evidence.

4. It appears to us that three separate and distinct questions are raised by the motions to strike and the arguments in support of it. The first question raised is whether it is within the proper scope of inquiry in a radio licensing proceeding to determine on the basis of an applicant's previous activities whether he is likely to be fair in his treatment of racial and religious groups in the community in discharging the duties and responsibilities of a license. The second question is whether the First Amendment or section 326 of the Communications Act bars such inquiry in the case of a newspaper applicant, where the activities of the applicant which are alleged to show his bias and lack of fairness are contained in the articles, news stories, and editorials printed in the paper. The final question is whether, if such an inquiry is permissible, the particular testimony offered in this case by AJC should be stricken from the record if, upon evaluating it, it is found to be lacking in probative force, or unreliable and inconclusive. In discussing these issues raised by the motion to strike, we are addressing ourselves to the general problems presented; nothing said in this opinion is to be taken as assuming that the particular testimony which is the subject of the motion to strike in fact proves what it is offered to show.

5. We turn now to consideration of the first question of law presented by the motion to strike. With respect to all applicants for a radio station license, whether newspaper applicants or others, section 307 (a) of the Communications Act provides that an application shall be granted only "if public convenience, interest or necessity will be served thereby." Section 309 (a) provides that if the Commission is able to find from an examination of an application that the standard of "public interest" can be met it may grant an application; if, however, it is unable to make such a finding, it must set the application down for hearing. Operation of a radio station in the "public interest" clearly contemplates more than that a licensee will have sufficient financial and technical resources to put out an audible signal which does not interfere with that of any other station beyond certain protected limits. Thus, section 308 (b) of the Communications Act provides that the Commission may require information from applicants for licenses concerning their citizenship, character, financial, technical and other qualifications to operate a radio station. And the courts have upheld Commission denials of applications for licenses or renewal of licenses to persons who had been found to lack the requisite character qualifications. In the case of *Federal Communications Commission* v. *WOKO, Inc.*, 329 U.S. 223; and *Calumet Broadcasting Corp.* v. *Federal Communications Commission*, 160 F. 2d 285, the respective denials of applications for a renewal of license and for an original construction permit were based on findings of lack of character qualifications because of falsifications and concealments practiced by

the applicants in dealing with the Commission. In the case of *Mester* v. *United States*, 70 F. Supp. 118 (three-judge court, E. D. N. Y.), affirmed, 332 U. S. 749, rehearing denied, 332 U. S. 820, the courts have upheld the denial of consent for the transfer of a license where, on the basis of evidence relating to infractions of law in the conduct of an edible-oil business, and evasions in giving testimony concerning these matters, the Commission concluded that the proposed transferees did not possess the requisite character qualifications.[2] The courts have also upheld denials based upon grounds that the licensees involved had been operating their stations in their own private interests as contrasted with the public interest of the listening public, by prescribing for sicknesses by radio on the basis of letters outlining the patients' symptoms (*KFKB Broadcasting Association* v. *Federal Radio Commission*, 60 App. D. C. 79, 47 F. 2d 670), or by using the station to foster the licensee's own particular ideas on social problems while vilifying and blackmailing all opposite groups (*Trinity Methodist Church, South* v. *Federal Radio Commission*, 61 App. D. C. 311, 62 F. 2d 850, cert. denied 288 U. S. 599). In this latter case, one of the charges against the licensee was that he "had alluded slightingly to the Jews as a race and made frequent and bitter attacks on the Roman Catholic religion and its relations to the Government." The Court of Appeals held that the Commission could reasonably find that this type of activity, along with the licensee's other activities, were not in the public interest and on that basis, could refuse to grant a renewal of its license.

6. The exercise of the duties and responsibilities of a licensee to render a service in the public interest to the community in which he is authorized to operate, clearly entails something more than a mechanical doling out of allotted programs in the various categories of program service. For, under the Communications Act, the responsibility for the selection and presentation of programs rests with the licensee itself. Section 326 of the Act specifically forbids the Commission to exercise any powers of censorship over radio programs, and thus makes it clear that it is no business of the Commission to say that any particular program should or should not be presented. The licensee itself, however, possesses an extensive discretion to select or reject programs. The manner in which this discretion is exercised will, of course, determine, in large part, the extent to which the station renders a public service to the community. Thus, the manner in which time is allocated for the discussion of controversial issues of public importance, for the presentation of religious services and other religious broadcasts, for the presentation of news events

[2] In its opinion, the statutory three judge District Court stated (70 F. Supp. 118, 121): As one of its reasons for denying consent, the Commission concluded from these facts that in the conduct of their edible-oil business, handling a product for human consumption, the transferees had manifested a flagrant disregard for Government regulations designed for public protection and that they had, in their deceptive practices, demonstrated the absence of a sense of public responsibility, which would make inadvisable, from the viewpoint of public interest, the transfer of a radio station and license to these intended purchasers. This determination was likewise based upon the second reason that the testimony of transferees concerning their involvement with governmental bodies in these fraudulent practice proceedings was evasive and showed an extreme lack of candor upon their part, which made inadvisable their being accorded the public trust of operating a radio station.

The Court further stated (70 F. Supp. 118, 122): A person's "character" is usually thought to embrace all his qualities and deficiencies regarding traits of personality, behavior, integrity, temperament, consideration, sportsmanship, altruism, etc., which distinguish him as a human being from his fellow men. His disposition toward criminal acts is only one of the qualities which constitute his character. The statute subjects an applicant's "character" to scrutiny by the Commission: in the absence of a legislative directive to the narrow interpretation advanced by plaintiffs, courts must give to words their commonly understood definitions and in this case "character" certainly embraces involvement in the litigation proved against the plaintiffs and their disposition not to be ingenuous and truthful concerning it.

and discussions of civic importance in the community, and for numerous other types of programs of vital importance to the community served, will depend upon how the licensee exercises its judgment. It is evident that Congress in enacting the Communications Act, and in setting up the public interest as a standard for the granting of licenses did not intend that this extensive discretion and authority of the licensee should be exercised for his own private interests in a grossly partial discriminatory or unfair manner. Nor can the provision of section 3 (h) of the act, that a person engaged in radio broadcasting shall not be deemed a common carrier, be regarded as conferring on the licensee any such power to act arbitrarily. For that section makes clear that it is the licensee who shall exercise judgment as to what programs shall be selected and broadcast. But it does not at all abrogate the duty of exercising that judgment in the light of the standard of public interest.

7. The fairness with which a licensee deals with particular racial or religious groups in the community, in the exercise of his power to determine who can broadcast what over his facilities, is clearly a substantial aspect of his operation in the public interest. Counsel for the News Syndicate, on oral argument, agreed that the Commission could examine the "acts" of an applicant, but not his "language" to determine whether he would be likely to exercise his authority as a licensee with fairness. These "acts" with respect to an existing licensee would, of course, be primarily his record as a broadcaster; in the case of an initial applicant, his record as a citizen and his record in the carrying on of any business in which he may have been interested and determined policy. Such an inquiry into whether an applicant is likely to administer fairly his responsibilities as a licensee with regard for the interest of all groups in the community is not, and cannot properly be, an inquiry into the opinions and beliefs * * * social, economic, political or religious * * * of the applicant. Whether or not the applicant is a Democrat or Republican, is Protestant, Catholic or Jewish, is a conservative or radical, or has a personal preference or antipathy for any particular religious or racial group, is not at all the issue. The Commission has not in the past sought to inquire into these matters, and does not propose to do so. The issue is, rather, whether the applicant, whatever his own views, is likely to give a "fair break" to others who do not share them. To that inquiry, evidence of past conduct which is reasonably indicative of the manner in which the applicant is likely to act in the future, is certainly relevant. But, clearly, that past conduct cannot be the mere expression of views, whether oral or in the pages of a newspaper or periodical, but must plainly constitute acts of unfairness as, for instance, denial of any opportunity to reply to attacks under circumstances where fair play requires the granting of such an opportunity, or the repeated making of irresponsible charges against any group or viewpoint without regard for the truth of such charges and without bothering to determine in advance of their publication whether they can be corroborative or proven.

8. What we have said above about qualifications of licensees, generally, is even more true in cases, like the present one, where the issue is not whether a single applicant has the minimum qualifications to operate a radio station in the public interest, but which applicant of a number of mutually exclusive applicants for a lesser number of available frequencies is the best qualified. In such cases, prior to any action by the Commis-

sion pursuant to section 309 (a) of the act, the applicants are entitled to a full opportunity for a hearing which will enable the Commission to make a fair, comparative consideration of the respective merits of the conflicting applications to determine which of the applicants should be granted on the basis that their operation would better serve the public interest. *Ashbacker Radio Corp.* v. *Federal Communications Commission,* 326 U. S. 327. And, as the *Ashbacker* case makes clear, the choice must be based on a determination from the facts as to what grant or grants would best serve the public interest. Accordingly, a showing that a particular applicant could not be relied on to exercise the extensive power and responsibility of a licensee with fairness may be relevant to a showing that the grant of a competing applicant would better serve the public interest, on the ground that there would be a greater assurance that all groups in the community would be fairly dealt with by that licensee.

9. Finally, in the present case, there exists one other reason why we believe that consideration of the record of the petitioner with respect to its treatment of minorities is relevant. This results from the fact that the petitioner, in its affirmative case, introduced a statement of policy indicating that if it secured a license it would treat all races and religions fairly and without bias or discrimination in its broadcast activities. Having itself so formulated its program policies with respect to these matters of obvious importance, it has clearly opened the door for evidence introduced for the purpose of impeachment.

10. We come now to the second question, whether the First Amendment and section 326 of the Communications Act bar such an inquiry where an applicant for a radio station license is the proprietor of a newspaper and the "acts" examined into consist of matter published in the paper. We believe that the guarantees of freedom of the press, and of expression generally, embodied in the First Amendment, and reflected in section 326 of the Communications Act, do not require the elimination of all consideration of whether or not an applicant is likely to be fair in discharging his responsibilities of a licensee, in the case of a newspaper applicant, or, indeed, any other type of applicant. These guarantees are designed to prevent suppression of opinion by governmental action and are not at all intended to give newspapers a preferred position over all others who may seek to become licensees of radio stations by requiring a more limited inquiry into their qualifications. For the history of the First Amendment and the decided cases make two things clear: that governmental action which seeks to suppress utterance of opinion in advance of publication, or which arbitrarily discriminates against any medium for expression of opinion is forbidden by the First Amendment, and that the press is not entitled to immunity from nondiscriminatory offical action which is equally applicable to those engaged in other enterprises and which is not designed to suppress or curtail utterance of opinion. Any inquiry to determine which of a number of conflicting applicants is more likely to administer the responsibilities of a licensee with fairness to all groups and points of view in the community can hardly be characterized as an effort to suppress opinion. It is, on the contrary, an effort to insure that the opportunity for free expression over the radio shall not be unduly curtailed by the whim and caprice of licensees. In urging that any such inquiry necessarily entails "censorship," the petitioner argues that censorship and suppression of opinion will result from the fact that newspaper applicants will, in order to secure licenses, suppress the type of opinions which they believe the Commission may disapprove and adopt the opinions which they believe the Commission approves. But this argument stretches the content of the word censorship beyond all recognition. And it assumes that in order to reach a conclusion whether an applicant is, in the light of his past conduct, likely to be fair in dealing with opinions and groups of which he disapproved, the Commission must sit in judgment on, and approve or disapprove his opinions.

11. But that assumption is neither a necessary nor a correct one. It would not require any appraisal of the merits in issue to say that a newspaper which permitted one side of a controversy to purchase unlimited amounts of advertising space while denying any opportunity to do so to the other side, would be acting unfairly.

12. Where the Commission is able to conclude that past conduct of an applicant, demonstrative of unfairness, affords a reasonable basis for anticipating like conduct in the future as a licensee, no censorship within any intelligible meaning of that term is involved. *KFKB Broadcasting Association* v. *Federal Radio Commission,* 60 App. D. C. 79, 47 F. 2d 670, *Trinity Methodist Church, South* v. *Federal Radio Commission,* 61 App. D. C. 311, 62 F. 2d 850. Decided cases make it clear that censorship, within the meaning of the First Amendment consists in suppressing expression of views in advance of publication (*Near* v. *Minnesota,* 283 U. S. 697), or in deterring expression of opinion entitled to protection of the First Amendment by threat of subsequent punishment (*Bridges* v. *California,* 314 U. S. 252), or requiring compliance with discriminatory licensing or taxing requirements as a prerequisite to any expression of opinion (*Grossjean v. American Press Co.,* 297 U. S. 233; *Murdock* v. *Pennsylvania,* 319 U. S. 105; *Thomas* v. *Collins,* 323 U. S. 516) or a mandatory requirement of compliance with an officially imposed viewpoint (*West Virginia State Board* v. *Barnette,* 319 U. S. 624). However, the fact that a publisher may be subsequently subjected to an action for libel because of his utterances does not constitute censorship, although that possibility may well constitute some kind of deterrence (Cf. *Robertson* v. *Baldwin,* 165 U. S. 275). The possible deterrent effect of a denial of an application for a license because of gross unfairness manifested by the applicant in the conduct of his publishing enterprise is at least as remote as the possible deterrent effect of suit for libel. As in the case of libel, no adverse consequences ensue unless a case is actually made out, under circumstances where the publisher has an opportunity to dispute the allegations and show that they are without merit, if he can do so. And the possibility that a publisher may be called on to meet allegations of unfairness in a Commission hearing in which his qualifications are being compared with those of other applicants is no more a burden on the freedom of the press than the possibility that libel actions may have to be defended.

13. The third question presented is whether the particular testimony offered in this case by AJC should be stricken from the record because, upon evaluating it, it has been found to be lacking in probative force or unreliable and inconclusive. After careful consideration, we have reached the conclusion that the testimony is relevant to issues which may properly be considered within the scope of this proceeding, and should, therefore, not be stricken from the record.

14. It seems to us that in requesting that the AJC evidence be stricken entirely from the record on the ground that it fails to establish the conclusion to which it is relevant, petitioner is invoking considerations not applicable to administrative proceedings of this type. It is true that in civil or criminal cases tried before a judge and jury, the judge before sending the case to the jury for its determination of the facts may, under certain circumstances, strike evidence which has so little probative value that it would be legally insufficient grounds for a factual determination by the jury. In administrative proceedings, however, the agency is in the position of a judge sitting without a jury and must determine both the facts and the law. And since the agency must, in proceedings such as these, make findings of fact on the basis of "reliable, probative and substantial evidence"[3] in the record, possible reliance on legally insufficient evidence may be detected and corrected. Findings and conclusions of an expert body thus leave no room for the surmise and speculation about the possibilities of prejudice which a general verdict may engender and cannot dispell. Under such circumstances there exists no necessity for insulating the special fact finding body from relevant evidence which may turn out on analysis to be insubstantial; it is sufficient for the agency to base no findings of fact on the evidence which it believes is legally insufficient. When, therefore, testimony has been properly admitted as relevant by the hearing officer the ritual of ordering such testimony stricken is not at all the appropriate way of expressing the conclusion reached after an evaluation of that testimony in the context of the entire record, that such testimony will not support findings of fact. The arguments which petitioner urges against the admissibility of the AJC testimony are more properly directed, we believe, to its probative force to support a finding rather than its admissibility as relevant testimony.

15. We have reserved the question of what weight, if any, should be given the testimony of the AJC for discussion in the Commission's decision in the proceedings on the above-entitled applications.

16. For the foregoing reasons, it is ordered, that the motion to strike, filed November 14, 1946, by the News Syndicate, Inc., be denied, and that the memorandum opinion and order of June 13, 1948, be vacated.

DISSENTING OPINION OF COMMISSIONER JONES

I disagree with the conclusion of the majority of the Commission denying the motion of the News Syndicate, Inc., to strike from the record the evidence adduced by the American Jewish Congress relating to the content and policies of the New York Daily News. In my opinion, the evidence adduced by the AJC should be stricken from the record since such evidence is and has been found by the majority of the Commission to be without probative value.[4] Moreover, in my opinion, while evidence bearing on the character of an applicant is properly received in a hearing before the Commission, nevertheless in the case of a newspaper applicant such evidence cannot properly be receivd for the purpose of determining whether that applicant would or might in the future operate its broadcast facility with the same policies it has employed in running its newspaper. The considerations underlying my views are developed hereafter.

I will discuss the four questions which, according to my view, are the legal considerations essential to a proper determination of the matter.

1. Did the admission of the AJC evidence violate section 326 of the Communications Act of 1934?

Section 326 of the Communications Act prohibits the Commission from exercising any power of censorship over radio communications or signals transmitted by any radio station and in addition prohibits the Commission from promulgating regulations or fixing conditions which shall interfere with the right of free speech by means of radio communication. The section in clear and unambiguous terms refers only to the power of the Commission over radio communication or signals transmitted by a licensee. The News is not a broadcast licensee, does not operate a radio station, and the evidence in question was not broadcast by any radio station, but consisted of news items and editorials printed in the applicant's newspaper prior to the hearing, and a "content analysis" of the applicant's newspaper as compared to other newspapers in the area. When it admitted this evidence, the Commission neither by promulgation of regulations nor by fixing conditions interfered with the right of free speech by radio communication. The evidence of the AJC related to the language of the applicant's newspaper. Obviously, the Commission has no jurisdiction over the applicant's newspaper and need assert none when it admits such evidence. Section 326 does not extend to language printed in a newspaper even though the publisher of the newspaper is an applicant before the Commission for radio facilities. The evidence in question relates to the applicant as a newspaper publisher and not as a license of a radio facility, and, therefore, section 326 is not applicable and does not forbid the admission of the AJC evidence in this hearing.

2. Did the admission of the AJC evidence violate the First Amendment to the Constitution?

The AJC evidence consists of editorials, articles by commentators and news stories published by the News over an eight-year period prior to the hearing, and a "content analysis" of news items published by the News in six sample months prior to the hearing, based on a count of items allegedly "favorable" and "unfavorable" to certain racial and religious groups, compared with similar news items of four other New York City newspapers. Thus, we are concerned here with the question of whether the Commission, when it admitted in evidence at this hearing the language published previously in applicant's newspaper, and the "content analysis" described above, violated the First Amendment.

As the majority opinion points out, reference to the history of the First Amendment and the decided cases makes two things clear: That governmental or other action which seeks to suppress utterance of opinion in advance of publication or which discriminates against any medium for expression of opinion is forbidden by the First Amendment.

Since the AJC evidence consists of language previously published by the Daily News or related thereto as described above, its admission in evidence does not suppress future expression of opinion by the applicant in its newspaper nor does it discriminate against its medium for expression of opinion—the newspaper—even though the owner thereof is an applicant for a broadcast license. I conclude, therefore, that after the

[3] Cf. sec. 7 (c) of the Administrative Procedure Act. Although this proceeding arose prior to the passage of the Administrative Procedure Act, sec. 7 (c) embodies standards which are applicable here, since that section is a restatement of principles of law previously established by the courts. See Administrative Procedure Act, Legislative History, S. Doc. No. 248, 79th Cong., 2d Sess., pp. 30, 207–208, 269–270.

[4] See par. 2 of the conclusions to the final decision in the above-entitled matter.

publication of any material protected by the First Amendment it becomes admissable in evidence provided its probative value is established for the purposes for which it is offered.

3. Upon what basis does the admissibility of evidence of this type rest?

In my opinion the admissibility of the type of evidence offered by the AJC clearly may be based upon section 308 (b) of the Communications Act, which reads in part as follows:

> All such applications (for broadcast construction permits) shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical and other qualifications of the applicant to operate the proposed station * * * and such other information as it may require. The Commission, at any time after the filing of such original application and during the term of any such license, may require from the applicant or licensee further written statements of fact to enable it to determine whether such original applications should be granted or denied or such license revoked. * * *

In the instant case, the AJC evidence is directed at the character of the applicant. Under the plain, unequivocal terms of the statute the Commission may "require" and receive information from any applicant apropos its character, and it follows therefrom that in a comparative hearing upon conflicting applications the Commission may admit in evidence testimony of the same tenor. I think the foregoing clearly is sufficient statutory authority for admission of the AJC evidence if the evidence adduced is otherwise admissible; but the majority having dealt with the question in a much broader manner, I feel I must deal at some length with the majority's theory of its admissibility.

The majority has based the Commission's authority to admit the AJC evidence upon the additional grounds of the "public interest" clauses in section 307 (a), 309 (a) and 303 (r) of the Communications Act[5] and by certain court decisions.

The court decisions cited by the majority uphold the Commission's denial of applications for renewal of station licenses upon the ground of falsification and concealment by the applicants in dealing with the Commission,[6] or upon the ground that the licensee has operated its station in its own interest, rather than the public interest, in broadcasting medical prescriptions, and in fostering the licensee's own ideas on social problems while vilifying and blackmailing opposing groups,[7] or upon the ground that the proposed transferee applicant had operated its business in violation of law.[8] Unlike the applicants in the cited cases, the News Syndicate is an applicant for a new broadcast station and not an applicant for renewal of an existing station license. The News Syndicate is not accused of falsifications or concealments; it is not accused of failure to operate a broadcast station in the "public interest, convenience, or necessity"; nor is it accused of violating any law—Federal, State, or local.

Accordingly, in my opinion the authorities cited do not support the argument of the majority.

In fact, I know of no court decision which would support the Commission in examining the news and editorial policies of an applicant's newspaper for the purpose of determining what the policies of the applicant might or might not be in the future operation of a proposed broadcast station. In the instant case, the character of the News as a newspaper publisher cannot be judged by the standards required by the Communications Act for the licensee of broadcast facilities. Newspapers do not come under the jurisdiction of the Commission as set forth in the Communications Act.

For the Commission to apply to the News as an original applicant the standards by which broadcast licensees are judged is not within the power of the Commission in my opinion because a newspaper is a private investment for private profit. It may be an advocate of any point of view from any private standpoint or position. It can refuse to run a "voice of the people" column or run such a column for those who disagree with its language, editorials or its commentators. Any lawful whim or fancy it cares to pursue cannot be challenged by anyone, including the Government itself, by virtue of the protection afforded by the First Amendment to the Constitution. It can even pursue any lawful doctrine for private profit. In this respect it is no different than any other applicant who has stated his views on any question in public or private. A newspaper should not be discriminated against by this Commission because it is part of our free enterprise system running its newpaper for private interests as distinguished from the "public interest, convenience, or necessity." I therefore conclude that the editorials, articles by commentators, news items and "content analysis" offered by the AJC should attribute character to this newspaper applicant only in the manner and upon the standards prescribed for the thoughts uttered or written by any other applicant pursuing his private business for profit.

The majority characterize the editorials, articles by commentators and news stories and a "content analysis" of "news items" published by the News as "activities" and "acts."[9] Is this the standard the Commission has used, or the characterization it has assigned to the published language of other applicants? In my opinion it is not. The FCC recently had before it for consideration an application by the Unity Corp., whose principal officer and controlling stockholder, Edward Lamb, had published a book, one excerpt of which is as follows:

> If the American planned economy is to be achieved, it becomes evident that those who produce, the workers and the farmers, and those who defend, i. e., the militia men, through joint action and organizing jointly must assume title to the means of production.

This excerpt standing alone and unexplained in the record could be interpreted that Lamb advocated the overthrow of the Government by force and violence. If this applicant's words are "acts" or "activities" this

[5] Sec. 307 (a) provides: "The Commission, if public interest, convenience or necessity will be served thereby, subject to the limitations of this act, shall grant to any applicant therefor a station license provided for by this act."

Sec. 309 (a) provides: "If upon examination of any application for the renewal or modification of a station license the Commission shall determine that public interest, convenience, or necessity would be served by the granting thereof, it shall authorize the issuance, renewal, or modification thereof in accordance with said finding. In the event the Commission upon examination of any such application does not reach such decision with respect thereto, it shall notify the applicant thereof, shall fix and give notice of a time and place for hearing thereon, and shall afford such applicant an opportunity to be heard under such rules and regulations as it may prescribe."

Sec. 303 provides: "Except as otherwise provided in this act, the Commission from time to time, as public convenience, interest, or necessity requires shall * * * (r) Make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this act, or any international radio or wire communications treaty or convention, or regulations annexed thereto, including any treaty or convention insofar as it relates to the use of radio, to which the United States is or may hereafter become a party."

[6] *Federal Communications Commission* v. *WOKO, Inc.*, 329 U. S. 223; *Calumet Broadcasting Corp.* v. *Federal Communications Commission*, 160 F. 2d 285.

[7] *KFKB Broadcasting Association* v. *Federal Radio Commission*, 47 F. 2d 670; *Trinity Methodist Church, South* v. *Federal Radio Commission*, 62 F. 2d 850, cert. denied 288 U. S. 599.

[8] *Mester* v. *United States*, 70 F. Supp. 118 (three judge court, E.D.N.Y.), affirmed, 332 U. S. 749, rehearing denied, 332 U. S. 820.

[9] Pars. 4, 7, and 10 of the majority opinion.

statement in the record is an overt act against the Government of the United States and against the entire public interest and would disqualify the Lamb application. Had the Commission held in the Lamb case that an applicant's published language was an "act," it would seem that the above quotation standing alone and not clearly explained at the time of publication might well have been considered an "act of treason." I do not think that an explanation made several years later of what Lamb meant by the above quotation, or other language, which he later adopted and published in his newspaper several years later, is of any assistance to the Commission to mitigate such "act." In other words, one is not excused from the penalty of the law for committing a capital offense by showing that at a subsequent time he may have repented. An unlawful act is an offense regardless of alleged subsequent good conduct. Therefore, when the Commission made a grant of the Lamb application,[10] if not by express opinion, it had to determine as a condition precedent that Lamb's above-quoted statement from his published book was not an "act" or "activity" against the Government of the United States—against the entire "public interest." I think the Commission incorrectly determined that Lamb's statement need not be clarified by further inquiry. In my opinion, this language of Lamb justified a further hearing to examine his "acts" and "conduct" as a citizen in relation to this doctrine expressed in his book. The Commission, however, taking a different view gave him a grant.

When the Commission made a grant to Lamb it had to resolve the same questions that we have before us in the instant case as a condition precedent to the grant. The fact that we are making a separate determination on a motion to strike in the instant case is immaterial. The instant case is exactly like the Lamb case except that the instant case deals with language of the applicant published in its newspaper regarding a segment of the public and the Lamb published language affected the future existence of our form of government itself wherein the entire public is affected. Lamb furnished statements subsequently published in his newspaper and adopted by him which explained his views and opinions at another time. The News offered news articles, columns and editorials which explained a different view than that claimed by the AJC for its evidence. I, therefore, conclude that the Lamb case and the instant case are on all fours and that the Commission did not find the Lamb published statements in his book were "acts" or "activities" and therefore should not characterize the News editorials, news items, and commentators' columns as "acts" and "activities."

While I consider that Lamb's published statement in his book required a thorough further hearing into his conduct, at the moment it is of utmost importance that the standards of comparative consideration of applicants and the measure of minimum qualifications of applicants remain constant to apply with equal force to those whose views and opinions we despise as well as those who hold views we cherish. Failing to have constant rules of consideration for similar facts concerning applicants, the Commission could find the written, published, or spoken word of an applicant who meets its particular brand of thinking to be compatible with "the

[10] FM stations granted to Unity Corp. March 12, 1948 at Mansfield and Springfield, Ohio, and March 31, 1948 at Erie., Pa.; television stations granted March 17, 1948 at Columbus, Ohio (Picture Waves, Inc., Lamb 22 percent stockholder) and at Erie, Pa. (Dispatch, Inc., Lamb 40 percent stockholder).

public interest, convenience or necessity." At the same time, by applying other considerations to an applicant whose views displeased it, the Commission could determine the language incompatible with "the public interest, convenience or necessity." If it is possible for the Commission to apply a double standard to different applicants under like facts, I need not labor an argument for the conclusion that licensees would feel compelled to select program content which meets Commission approval to keep their licenses or obtain a renewal thereof in order to meet an easier test of "public interest, convenience, or necessity." This would be a simple method for the Commission to censor "radio communications or signals transmitted by a radio station" and a suppression of free opinion transmitted by radio stations in violation of section 326 of the Communications Act and the First Amendment to the Constitution. In the case of a newspaper such action of the Commission would be a suppression of its media of expression and a violation of the First Amendment.

I do not think the situation is changed by the fact that in the instant case the AJC evidence is considered by the Commission for comparative qualifications among applicants. The standards I have discussed above should remain constant whether facts are involved for comparative determination or minimum qualification. Nor can the program plans of a newspaper applicant be impeached by news articles, editorials and "content analysis" thereof of the applicant's newspaper.

4. Should the AJC evidence be stricken because it lacks probative force?

The Commission's final decision in this matter (par. 2 of the conclusions) contains the conclusion that the AJC evidence does not establish the charge that the News has been biased or unfair in its handling of minority questions in its newspapers. In my opinion, this evidence is so lacking in probative value that it should be stricken from the record.[11]

The danger inherent in failure to strike such evidence from the record is illustrated by the memorandum opinion of the majority herein. In that opinion, the majority refers to the "activities" of the applicant; the exercising of the rights of a licensee "in a grossly partial, discriminatory or unfair manner"; and "the repeated making of irresponsible charges against any group or viewpoint." While the majority purports to base no finding on the AJC evidence,[12] and reaches the conclusion that the AJC evidence has not established the charges made, the majority's memorandum opinion is concerned largely with the majority's view of the law applicable to situations where such charges have been sustained. Likewise the concurring opinion cites *Near* v. *Minnesota,* 283 U. S. 697, wherein a Nebraska District Court found a newspaper publisher was "chiefly devoted to malicious, scandalous, and defamatory articles," as though a like court finding against the News was in evidence in the instant case. On the contrary, the Commission on the 9th day of April 1947, found that "none of the articles (published by the News) contains express anti-Jewish or anti-Negro statements." The majority herein did not make such a finding. I am not concerned here with the outcome of the News application. I am advocating a doctrine of constant standards of consideration that fall alike upon all applicants. I would discuss the same

[11] Cf. Commission's memorandum opinion, decided April 9, 1947, in this matter, granting the instant motion of the News Syndicate Co., Inc., to strike this evidence.

[12] Cf. par. 15 of the final decision.

points of law whether evidence was adduced by the Society of Friends or the American Jewish Congress, or whether such evidence was directed against the Daily News or the Daily Worker. The concurring opinion seems to avoid the differences in the Commission's standards of consideration of Lamb's excerpts as "utterances" and the News' excerpts as "acts" by asserting that "the examiner did not stop to ponder whether they (Lamb's published statements) were 'utterances' or 'acts'." Is the Commission deciding cases on the basis of what "an examiner thought" of evidence? Emphatically the Commission's function is to look at the record and apply the same law to the same or similar facts. The Commission certainly has time to ponder whether published statements of one applicant or another applicant's controlling stockholder concurrently considered by it are "acts"—"acts of treason"—or "utterances" and give all applicants equal justice under the law. In the *Unity* case a competing applicant sought to introduce Lamb's entire book to impeach Lamb's credibility. The question of admissibility of Lamb's entire book was before the Commission. Therefore, when the Commission failed to rule on the offer in evidence of the entire book, I conclude it did not find that language repeated by Lamb that he might possibly repeat in other parts of his book constituted or might constitute "acts" or "activities." In other words, the Commission had to rule that repeating the charges did not cumulate to "acts of treason" by Lamb against the Government or an "act" against the entire public interest, convenience and necessity. For these reasons the quotations from the majority opinion in this paragraph are improper and show that a double standard is applied by the Commission to the qualification of Unity and in the instant case to the qualification of the News to become licensees. From this standpoint it will be noted that the concurring opinion misinterprets my discussion under points 3 and 4 in my dissenting opinion. Also article III, section 3 of the Constitution discussed by the concurring opinion is inapplicable. Accordingly, let us look at the evidence in the instant case.

There was adduced one editorial and one news story published in 1938, 2 editorials published in 1941, 1 news story published in 1942, 1 Washington column published in 1943, and 18 other similarly scattered articles published over a period of 8 years (1938–46). Over this 8-year period, the News published at least 2,920 issues of its newspapers. In that period, only 23 articles or editorials considered by the AJC to be unfair in their treatment of various racial and religious groups were published. There are other articles and editorials adduced by the News which controvert the evidence introduced by the AJC.

Almost any group or organization will find itself subject to criticism on some occasion in the daily press. This is as it should be; it tends to prevent arbitrary and inconsiderate action on the part of any group, no matter what it is. The small number of items in the hearing record is too sparse a selection to have any probative value or to justify such characterizations as those described in the majority opinion.

The "content analysis" of news stories published in the Daily News is based upon a count of "favorable" and "unfavorable" news items concerning certain minority and racial groups published in six sample months in the pages of the News and of four other New York City daily newspapers. Ratios are shown of favorable to unfavorable stories, the number of stories in each category to the total number of stories published,

and the number of column-inches devoted to each category compared with the total number of column-inches devoted to all news stories published. A final computation is shown which compares the figures for the newspapers of the News with the figures and ratios for the other newspapers, without a comparative criterion for determining the meaning of the figures presented by the study of the basis upon which the four other newspapers may be considered as norms with which the Daily News may be compared. This "content analysis" likewise does not justify any such characterizations as those described by the majority.

In the final analysis, the language of the News published in its newspapers as editorials, news items and commentators' articles and "content analysis" thereof, as weighed in the conclusions of the Commission's final decision are not connected with any "act" which shows bias or prejudice toward minority racial or religious groups. Such "acts" would limit circulation. General acceptance of the content of the news controverts the existence of such "acts" since the circulation is the largest of any newspaper in the country.

In my opinion, the AJC evidence has no probative force, and it should be entirely stricken from the record.

ADDITIONAL VIEWS OF COMMISSIONER COY, CHAIRMAN

I agree entirely with the views set out in the memorandum opinion adopted by the Commission. I think the issues formulated are a fair statement of all the substantial questions raised by the motion to strike. However, I venture to make this additional statement as to what seems to me to be the substance of memorandum opinion, in view of the matters raised by the dissenting opinion.

The first issue discussed in the memorandum opinion is plainly decided on the grounds that the Commission may properly consider the character of an applicant, and that the disposition to be fair is properly an element of the character qualifications of an applicant, since it is reasonably related to the fulfillment of the duties of a licensee. The opinion does not at all say that in passing upon the qualifications of applicants, the Commission is authorized to undertake to determine whether their past conduct, private or business, whether for pleasure or profit, has been in the public interest, or to judge that conduct by the standard of the public interest. The opinion states, rather, that the Commission may properly examine the past conduct of an applicant, whether private or business conduct, to determine whether the applicant possesses or lacks the character qualifications which are indispensable for operation of a radio station in the public interest. The opinion then goes to explain why a disposition to be fair in dealing with the interest of various groups in the community is reasonably related to the character qualifications of a licensee. I find nothing in the opinion which purports to tell any applicant how to run its business, whether it be publishing newspapers, selling edible oil, or any other type of business. I do find in it a statement that the standard of the public interest imposes on licensee in the operation of their station a duty to be fair and that evidence of the past conduct of an applicant, including the running of its business, whether newspaper, oil, or any other, designed to show how an applicant is likely to fulfill that duty is relevant to an inquiry into the character qualifications of the individual or enterprise, as an applicant. The propriety of Commission inquiry into

the past business conduct of an applicant to ascertain character qualifications was clearly established in the *Mester* case. If, as a result of this type of inquiry by the Commission, some potential applicants for radio station licenses feel that it would be well for them to observe higher standards of fairness and probity in the conduct of their affairs in order to be able to demonstrate that they possess the qualifications of a licensee, I find nothing in that indirect result of anticipation of an authorized inquiry into qualifications which is destructive of our system of enterprise or suggestive of any assumption of powers by the Commission which Congress did not confer. Congress has entrusted the Commission with the duty of examining into the character qualifications of applicants. And all the Commissioners have concluded that the testimony offered by AJC is admissible as relevant to that inquiry.

I do not see how the Commission's disposition of the Unity Broadcasting Co. case is in any way inconsistent with what is held in the memorandum opinion. With respect to the one matter put in issue by the motion to strike, the admissibility of the testimony offered by AJC as bearing on an applicant's qualifications, the Commission has done exactly the same thing and applied exactly the same standard in his case and in the *Unity* case so far as there is any similiarity between the two cases. First, in this case the AJC testimony was admitted. In the *Unity* case, the excerpt from the applicant's book was admitted. In both cases the testimony was admitted as relevant to the character of the applicant. Second, in this case, the AJC testimony was evaluated, and found to provide no basis for findings adverse to the News. In the *Unity* case, the testimony also was evaluated and found to provide no basis for an adverse finding. I find no application of a double standard so far. It is suggested, in the dissenting opinion, that different standards of evaluation have been used by the Commission because the testimony concerning the News was spoken of as relating to "activities" of the News, and that if it had been spoken of as relating to "utterances" the question of considering it at all in any way would vanish. It is also suggested that if the quoted excerpts from the book written by a principal stockholder in Unity had been regarded as "activities" or "acts" the results there would have been different. The News in presenting its program plans introduced a statement of policy that all races and religions would be treated fairly and without bias and discrimination. The AJC testimony was offered to impeach these representations and to attempt to show that in the light of its past history, the News could not be relied on, as a licensee, to act with fairness to all groups. As I understand the dissenting opinion, it agrees that the AJC testimony, whether it be spoken of as relating to "act" or "utterance," was admissible as relevant to character qualifications, and that its admission was not in violation of the First Amendment or section 326 of the Communications Act. In the *Unity* case, the excerpts from Lamb's book were admitted, as the record shows, in connection with an effort to impeach Lamb's credibility and to establish his want of character qualifications. In admitting the excerpts, the examiner did not stop to ponder whether they were "utterances" or "acts." And in considering the excerpts, the Commission was not stayed in doing so by any question of whether they were "utterances" or "acts." The testimony offered for impeachment purposes and for showing a lack of character qualifications was admitted in both cases, and no difference in treatment of the question

of admissibility of the testimony in these cases was made in terms of any distinction between "acts" and "utterances."

It is clear enough, from a reading of the discussion of points 3 and 4 in the dissenting opinion, that it is concerned not with the questions of admissibility, which is the only one treated in the memorandum opinion, but rather with the question of evaluation of the testimony, which in the case of the application of News Syndicate, Inc., is quite separately treated in paragraph 2 of the conclusions in the decision, where the Commission found that the testimony offered would not support any findings adverse to the qualifications of the News. I do not understand that the dissenting opinion quarrels with the evaluation of the testimony and the result there. But I do find that it discusses at length the evaluation of different testimony offered in a different case. I can find no application of a double standard in these two cases. The Commission has in its treatment of the AJC testimony in the News case made it clear that it would not make findings as to character based on a disposition to be unfair except on clear and convincing evidence. Certainly, the same insistence on clear and convincing evidence is applicable where it is claimed that the published matter constitutes commission of the crime of treason (the nature and requirements for proof of which are prescribed in article III, section 3, of the Constitution), or the crime of advocating the overthrow of the Government by force and violence (18 U. S. C. §10).

No such showing is made in that case.

It may be that the insistence on the distinction between language and "acts" in the dissenting opinion is meant to suggest that the manner in which a newspaper has been conducted should not properly be considered in evaluating the character qualifications of a newspaper applicant. But that is the very argument which I supposed had been rejected in the unanimous agreement of the Commission that the AJC testimony is admissible as relevant to the character qualifications of the applicant. Any disposition to backtrack from these conclusions is, for me, wholly dispelled by considering the possibility of a situation in which an enterprise having the same kind of history as described by the opinions of the courts, as that of the newspaper involved in *Near* v. *Minnesota,* 283 U. S. 697, come before the Commission as an applicant.[13] It would, in my mind, present a situation in which from the past history of the applicant, as a newspaper publisher, the Commission might reasonably conclude that such an applicant might use his position as a licensee to engage in the kind of operation which the Commission held to be contrary to the public interest in the case of *Trinity Methodist Church South* v. *Federal Radio Commission,* 61 App. D. C. 311, 62 F. (2d) 850, certiorari denied, 288 U. S. 599.

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[13] That case involved editions of a publication which the Minnesota District Court was able to find were "chiefly devoted to malicious, scandalous, and defamatory articles." The District Court also found that the publishers "did engage in the business of regularly and customarily producing, publishing and circulating a malicious, scandalous and defamatory newspaper" (283 U. S. at 706).

Mr. Justice Butler, in characterizing the publication in his dissenting opinion, stated (283 U. S. at 724):

"The record shows, and it is conceded, that defendants' regular business was the publication of malicious, scandalous and defamatory articles concerning the principal public officers, leading newspapers of the city, many private persons and the Jewish race. It also shows that it was their purpose at all hazards to continue to carry on their business. In every edition slanderous and defamatory matter predominates to the practical exclusion of all else. Many of the statements are so highly improbable as to compel a finding that they are false. The articles themselves show malice."

I am in complete accord with the conclusion reached by the Commission after evaluation of the evidence presented by the AJC in this case, that it does not establish this applicant was in fact biased, prejudiced, or irresponsible in the operation of its newspaper business. But I am unwilling to have that result reached after an evaluation of the evidence which has been admitted in this case, confused with the question of admissibility alone in a way wich obscures the propriety of Commission concern with the character qualifications of all applicants, including their disposition to be fair in their treatment of all groups in the community.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON 25, D. C.

In re Applications of	
CENTRAL CONNECTICUT BROADCASTING CO., NEW BRITAIN, CONN.	DOCKET NO. 7567
THE HARTFORD TIMES, INC. (WTHT), HARTFORD, CONN.	DOCKET NO. 7673
THE NEW BRITAIN BROADCASTING CO., (WKNB), NEW BRITAIN, CONN.	DOCKET NO. 7904
For Construction Permits.	

April 9, 1948

APPEARANCES

Andrew G. Haley, James A. McKenna, and *Charles E. Thompson* on behalf of Central Connecticut Broadcasting Co.; *Sutherland G. Taylor* and *Edward A. Foote* on behalf of the Hartford Times, Inc. (WTHT); *John P. Southmayd* on behalf of The New Britain Broadcasting Co. (WKNB); *John Carr* and *Dwight E. Rorer* on behalf of the Outlet Co. (WJAR, Providence), intervenor; and *E. Theodore Mallyck* on behalf of the Federal Communications Commission.

DECISION

BY THE COMMISSION:

PRELIMINARY STATEMENT

1. This proceeding involves the applications of two licensees, the Hartford Times, Inc. (WTHT, 1230 kilocycles, 250 watts, unlimited time), Hartford Conn., and the New Britain Broadcasting Co. (WKNB, 840 kilocycles, 1 kilowatt, daytime only), New Britain, Conn., for construction permits to change their assigned facilities to 910 kilocycles, 5 kilowatts, unlimited time, using directional antenna day and night, and the application of Central Connecticut Broadcasting Co. for a construction permit to erect a new standard broadcast station at New Britain to operate on the same facility. It being apparent that simultaneous operation as proposed would result in mutually prohibitive electrical interference the applications were designated for a consolidated hearing to determine on a comparative basis which, if any, should be granted. The hearing was duly held at Hartford, Conn., on the 17th, 18th, and 19th days of October 1946, and at Washington, D. C., on November 21, 1946. On January 3, 1947, the Commission granted a petition filed December 16, 1946, by Central Connecticut Broadcasting Co. for leave to amend its application to show changes in its stock subscribers, reopened the record, and accepted a pertinent accompanying amendment. Each of the parties waived its right to file proposed findings of fact and conclusions. On January 7, 1948, the Commission adopted a proposed decision in the above proceeding proposing to grant the application of the New Britain Broadcasting Co. (WKNB), and to deny the applications of Central Connecticut Broad-